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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREENSTREET FINANCIAL, L.P., a
Delaware limited partnership,

Plaintiff,

-against-

1:07-cv-08005 (KNF)

CS-GRACES, LLC, a New York limited
liability company, RH LODGING SERVICES,
LLC, a New York limited liability company,
and ALAN FRIEDBERG,

Defendants.

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CS GRACES, LLC and RH LODGING
SERVICES, LLC,

Third-Party Plaintiffs,

**FOURTH PARTY
COMPLAINT**

-against-

SHERYL SMUL, SHERYL SMUL
GRANTOR ANNUITY TRUST and
ALAN G. FRIEDBERG,

Third-Party Defendants.

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SHERYL SMUL and the SHERYL SMUL
GRANTOR ANNUITY TRUST,

Third-Party Plaintiffs,

-against-

STOLOFF & SILVER, LLP and
GARY D. SILVER,

Fourth Party Defendants.

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Nature of the Action

1. By this Fourth Party Action, Sheryl Smul and the Sheryl Smul Grantor Annuity Trust seek indemnity over against their former attorneys for legal malpractice, with respect to the claims made against trustee Sheryl Smul herein by Third Party Plaintiffs CS-Graces, LLC (“CS-Graces”) and RH Lodging Services, LLC (“RH Lodging”).

Parties

2. Sheryl Smul, an individual and the trustee of the Sheryl Smul Grantor Annuity Trust, is one of the Third Party Defendants in this action, permanently resides at 12351 NW 2nd Street, Plantation, Florida, 33325 and is domiciled in and a citizen of the State of Florida.

3. The Sheryl Smul Grantor Annuity Trust (the “Smul Trust”), a Florida trust organized under the laws of Georgia, is one of the Third Party Defendants herein and is located at 12351 NW 2nd Street, Plantation, Florida, 33325. By reason of the citizenship of its trustee, Sheryl Smul, the Smul Trust is a citizen of the State of Florida.

4. Stoloff & Silver, LLP is a New York Limited Liability Partnership, each of the partners of which are domiciled in and citizens of the State of New York, with offices and its principal place of business at 26 Hamilton Avenue, Monticello, New York 12701.

5. Gary D. Silver is an individual and a partner in Stoloff & Silver, LLP, is domiciled in and a citizen of the State of New York, with offices and his principal place of business at 26 Hamilton Avenue, Monticello, New York 12701.

Jurisdiction and Venue

6. The amount in controversy herein, exclusive of interest and costs, exceeds \$75,000.00.

7 Subject matter jurisdiction over this Fourth Party Complaint arises pursuant to 28 U.S.C. § 1332(a)(1).

8. Venue is proper pursuant to 28 U.S.C. § 1391(a).

Facts

9. At all pertinent times, Stoloff & Silver, LLP and Gary D. Silver served as the lawyers for the Sheryl Smul Grantor Annuity Trust (the “Smul Trust”) and its trustee, Sheryl Smul, in connection with the negotiations for and the documentation and closing of the Agreement dated effective January 30, 2006 by and between the Smul Trust, CS-Graces and RH Lodging for the divestiture of the Smul Trust’s 50% membership interest in RH Lodging and the transfer of that interest to CS-Graces (the “Divestiture Agreement”).

10. The Third Party Complaint herein alleges that your Third Party Defendants failed to disclose the existence of a lien against that interest in favor of Greenstreet Financial, L.P. (“Greenstreet”), the Plaintiff in this action.

11. The Smul Trust and Sheryl Smul, trustee, have denied and continue to vigorously deny any liability to Third Party Plaintiffs on that claim.

12. In the unlikely event that the Smul Trust and Sheryl Smul are found liable in contract to Third Party Plaintiffs in this action, however, Sheryl Smul, and the Smul Trust on behalf of Sheryl Smul as its trustee, have a right of action over for indemnity against their former attorneys, Stoloff & Silver, LLP and Gary D. Silver.

13. The trust declaration that established the Smul Trust, entitled “Sheryl Smul Grantor Annuity Trust” and dated January 2, 1997, provides in Article XIV thereof that the trustee of the Smul Trust shall have no personal liability for claims arising from the businesses or investments that the Smul Trust owns or operates:

Powers of Trustee

In the execution and management of the Trust herein created, Grantor hereby gives and conveys upon the Trustee the following special additional rights, powers and immunities which shall be exercised in a manner as may be fair and equitable under the circumstances, and consistent with the express intent that my annuity interest in this trust qualify as a Qualified Annuity Interest as provided by applicable law and regulations hereinabove set forth and incorporated.

A. To continue to carry on any business which may become a part of the Trust Estate; or become or remain a stockholder of a corporation, or a partnership, general or special, in any such business; to incorporate any such business and hold the stock as an investment, and to employ agents to manage and operate any such business without liability for indebtedness of any such business.

14. New York law permits such a limitation on a trustee’s personal liability in contract to be enforced, provided that either (i) sufficient notice of that limitation is given to contracting parties, or (ii) the contract in question contains language excepting the trustee from liability.

15. Stoloff & Silver, LLP, and Gary D. Silver, Esq., as the lawyers for the Smul Trust and for its trustee, Sheryl Smul, had a duty of reasonable care to the Trust and its trustee to ascertain the contents of the trust document. Had they done so would have identified the express limitation on the trustee’s personal liability as set forth above.

16. Stoloff & Silver, LLP and Gary D. Silver, as the lawyers for the Smul Trust and its trustee, Sheryl Smul, had a duty to exercise due care to make clear, in connection with the Divestiture Agreement, the above-mentioned limitation on trustee Sheryl Smul’s personal liability.

17. But for Stoloff & Silver, LLP's and Gary D. Silver's negligence and legal malpractice in documenting the Divestiture Agreement transaction, Sheryl Smul would have no exposure to personal liability in contract to the Third Party Plaintiffs.

FIRST CAUSE OF ACTION

18. Fourth Party Plaintiffs incorporate the allegations of the foregoing paragraphs, the same as if fully set forth herein.

19. The Smul Trust and Sheryl Smul, trustee, have denied and continue to vigorously deny any liability to Third Party Plaintiffs on their claims in the Third Party Complaint.

20. In the unlikely event, however, that Third Party Plaintiffs have judgment against Sheryl Smul, trustee on their contract theory, then and in that event Fourth Party Plaintiffs are entitled to judgment over against Stoloff & Silver, LLP and Gary D. Silver for indemnity.

21. Stoloff & Silver, LLP and Gary D. Silver were negligent in failing to document the Divestiture Agreement transaction to make it clear that Sheryl Smul, as trustee, had no personal liability in contract to CS-Graces or RH Lodging.

22. Such negligence and legal malpractice constitutes the proximate cause of the damages thereby suffered by Sheryl Smul, as trustee of the Smul Trust, and by the Smul Trust, derivatively, for the benefit of its trustee.

23. Sheryl Smul, trustee and the Smul Trust, derivatively, for the benefit of its trustee, are entitled to indemnity from and judgment over against Stoloff & Silver, LLP and Gary D. Silver jointly and severally for their legal malpractice, in the amount of any such judgment taken by the Third Party Plaintiffs.

WHEREFORE, Sheryl Smul and the Sheryl Smul Grantor Annuity Trust seek the entry of judgment over against Stoloff & Silver, LLP and Gary D. Silver, jointly and severally, as follows:

- (i) On the First Cause of Action, against Stoloff & Silver, LLP and Gary D. Silver and in favor of Sheryl Smul and the Sheryl Smul Grantor Annuity Trust, on its trustee Sheryl Smul's behalf, in the amount of any judgment taken against Sheryl Smul in contract by Third Party Plaintiffs CS-Graces, LLC and/or RH Lodging Services, LLC, plus interest thereon and the costs of this action; and
- (ii) for such other and further relief as is just and proper.

Dated: Goshen, New York
August 13, 2008

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